

ESTTA Tracking number: **ESTTA488960**Filing date: **08/14/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	The R.S. Lipman Company		
Entity	Corporation	Citizenship	Tennessee
Address	411 Great circle Rd Nashville, TN 37228 UNITED STATES		

Attorney information	Mark Swanson and Andrea Barach Bradley Arant Boult Cummings 200 Clinton Ave. W. Suite 900 Huntsville, AL 35801 UNITED STATES mswanson@babco.com, abarach@babco.com, wbabcock@babco.com Phone:256 517 5125
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**Applicant Information**

Application No	85379607	Publication date	07/17/2012
Opposition Filing Date	08/14/2012	Opposition Period Ends	08/16/2012
Applicant	Mexcor, Inc. 8950 Railwood Drive Houston, TX 77078 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 033. All goods and services in the class are opposed, namely: Whiskey
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**Grounds for Opposition**

Geographic indication which, if used on or in connection with wine or spirits, identifies a place other than the origin of the goods	Uruguay Round Agreements Act section 2(9)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4151987	Application Date	11/14/2011
Registration Date	05/29/2012	Foreign Priority Date	NONE

Word Mark	TENNESSEE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2011/06/07 First Use In Commerce: 2011/06/07 Beer

Attachments	85472260#TMSN.jpeg ( 1 page )( bytes ) TENN_CROWN_complaint.pdf ( 4 pages )(151279 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mark Swanson/
Name	Mark Swanson
Date	08/14/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85-379,607  
Published in the Official Gazette on July 17, 2012

<b>THE R.S. LIPMAN COMPANY</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No.:</b>
	)	
<b>MEXCOR, INC.</b>	)	
	)	
<b>Applicant.</b>	)	

**NOTICE OF OPPOSITION**

This Notice of Opposition is brought by The R.S. Lipman Company, a Tennessee corporation ("Opposer") in the pending trademark application Serial No. 85-379,607 filed by Mexcor, Inc. ("Applicant") for the standard character mark TENNESSEE CROWN, for goods identified in the Application as, "Whiskey" in International Class 33.

The Application was published in the Official Gazette on July 17, 2012.

Opposer believes it will be damaged by the registration or extension of protection of this trademark and hereby opposes registration of the same, alleging as follows:

1. Opposer is a Tennessee corporation having its principal place of business at 411 Great Circle Rd., Nashville, TN 37228.
2. Opposer currently is and has been in the business of acquiring and distributing beer, mixers, cigars, and other products in interstate commerce in the United States.
3. Opposer is the owner of Registration No. 4,151,987 for the mark TENNESSEE for "beer."

4. Opposer has used the TENNESSEE mark in connection with its goods since at least as early as June 7, 2011.

5. Opposer's and Applicant's marks are likely to be confused. The sight and sound of the marks are very similar, with the word TENNESSEE being identical. Additionally, the marks are used in connection with similar goods and thus have overlapping channels of trade. The marks are both used for alcoholic beverages, and the products are further related because whiskey is made by distilling beer.

6. Opposer has expended significant resources in efforts to promote and advertise its marks, and Opposer's goodwill in the marks will be harmed by Applicant's registration of the mark identified in Serial No. 85-379,607.

7. Applicant applied for the TENNESSEE CROWN mark based on an intent to use the mark, and there has been no use of the mark to this date.

8. Applicant applied for the TENNESSEE CROWN mark on July 25, 2011, which was after the date Opposer began using the TENNESSEE mark for beer.

9. Applicant's TENNESSEE CROWN mark for "whiskey" is geographically mis-descriptive, because consumers will likely believe whiskey sold under the mark TENNESSEE CROWN originates from the State of Tennessee, and the whiskey to be sold by the Applicant under the mark TENNESSEE CROWN will not originate from the State of Tennessee.

10. Tennessee is a famous location for producing distinctive whiskey, and the definition of the term "Tennessee Whiskey" in the North American Free Trade Act requires the Whiskey to be produced in the State of Tennessee. Consumers are likely to select a whiskey product based at least in part on the belief that the whiskey originating in the State of Tennessee.

11. 15 U.S.C. §1052 (a) indicates a trademark shall not be allowed when that trademark has a geographical indication which, when used with spirits, identifies a location other than the origin of the goods, and the mark was first used more than a year after the date on which the WTO Agreement enters into force for the U.S.

12. The WTO Agreement entered into force for the U.S. more than 1 year before July 25, 2011, which is the date Applicant filed for the TENNESSEE CROWN mark.

13. Applicant's mark should be refused registration based on (i) the likelihood of confusion with Opposer's mark, (ii) the prior use of Opposer's mark, and (iii) the geographically mis-descriptive nature of Applicant's mark.

Therefore, Opposer respectfully requests that this opposition be sustained, and the registration of application Serial No. 85-379,607 for the mark TENNESSEE CROWN sought by Applicant be refused.

The Application is in one (1) International Class, and a total fee of \$300.00 under 37 CFR § 2.6(a)(17) is enclosed. The Commissioner is authorized to charge any further fees required to Deposit Account Number 50-4293, in the name of Bradley Arant Boult Cummings LLP.

Respectfully submitted,



Mark Swanson  
Andrea Barach  
*Counsel for Opposer,  
The R.S. Lipman Company.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 14, 2012, I caused the foregoing **NOTICE OF OPPOSITION** to be served by United States mail, postage prepaid, in an envelope addressed to:

Michael Paul  
Gunn, Lee & Cave, P.C.  
300 Convent St., Suite 1080  
San Antonio, TX 78205-3738

By:   
Mark Swanson